



An  
Bord  
Pleanála

## Inspector's Report ABP-315560-23

<b>Question</b>	Whether the reconfiguration of golf course (location of new tee) and associated orientation play is or is not development or is or is not exempted development.
<b>Location</b>	Narin, Portnoo, Co. Donegal.
<b>Declaration</b>	
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	22/40
Applicant for Declaration	Patrick K Moore.
Planning Authority Decision	Is development and is exempted development
<b>Referral</b>	
<b>Referred by</b>	Patrick K Moore.
<b>Owner/ Occupier</b>	Narin and Portnoo Golf Club.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	11 <sup>th</sup> April 2023.
<b>Inspector</b>	Deirdre MacGabhann

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## **1.0 Site Location and Description**

- 1.1. The referral site is situated in the townland of Naran, Portnoo, County Donegal. It comprises lands associated with the Naran and Portnoo Golf Club. Access to the Club is from the county road, L-7543-2, which joins the R261 to the south west of the Club.
- 1.2. The subject site concerns the 3<sup>rd</sup> Tee which is situated approximately in the middle of the golf course to the north of Clooney Lough. The green lies east of the Tee. The referrers lands lie to the south of the T and green. They are separated from it by a small stream. At the time of site inspection there was evidence of a small number of golf balls on the third party lands.

## **2.0 The Question**

- 2.1. The question before the Board is whether the reconfiguration of the golf club (location of tee) and associated orientation of play is or is not development and is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. On foot of a section 5 application, in respect of the provision of a new tee at Narin and Portnoo Golf Club (made by the referrer) the PA declared, on the 21<sup>st</sup> December 2022, that the subject matter is development and is exempted development.

### **3.2. Planning Authority Reports**

- 3.2.1. Section 5 Referral Report (20<sup>th</sup> December 2022):
  - Refers to relevant sections of the Planning and Development Act 2000 (as amended) and Planning and Development Regulations 2001 (as amended) including certain definitions (structure, works, development), exempted development in respect of incidental works to golf courses and article 9 de-exemptions.

- The report considers that, having regard to the definition of the term development (works in, on, over or under land), the new tee comprised development.
- As the alteration to the course layout involves an extension to the area of the golf course to facilitate a new direction of play within the confines of the existing golf course, it is considered that works come within Class 34 of Part 1 of Schedule 2 of the P&D Regulations, 2001 (as amended).
- The de-exemptions set out in Article 9 of the Regulations do not apply, as these refer to the reason of traffic hazard.
- It was also concluded the works did not require appropriate assessment (see below).

### 3.2.2. Other Technical Reports

- Appropriate assessment screening (20<sup>th</sup> December 2022) – By virtue of the location or effects of the development outside the West of Ardara/ Maas Road SAC, it was considered that there would be no loss of habitat area, fragmentation, disturbance, impact on species population density or effects on water resource or water quality. The need for AA was therefore screened out.

## 4.0 Planning History

- RL2252. Referred to by the PA. The case considered whether site excavation works to accommodate regrading and alteration to golf course layout is or is not exempted development. The board decided in this case that the works comprised development and were not exempted development.

## 5.0 Policy Context

### 5.1. Donegal County Development Plan 2028-2024

- 5.1.1. The subject site comprises lands which are identified as Areas of High Scenic Amenity. This site is not affected by any protected view.

## 5.2. Natural Heritage Designations

- The subject site lies immediately north of the West of Ardara/ Maas Road Special Area of Conservation and proposed Natural Heritage Area (shared site code 000197) (see attachments).

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. The referrer makes the following arguments against the PA declaration:

- The new tee cuts directly across his fields and he collects of up to 30 golf balls a day.
- The location of the tee in such a position has health and safety issues.
- The tee interferes with the delicate ecosystem and marram grass growing in the location.
- PA decision disregards previous enforcement procedures. These include:
  - UD18280 – Warning letter issued under section 152 of the Act, referring to the erection of agricultural gate at south eastern portion of Narin and Portnoo Golf Club without the benefit of permission.
  - UD18280 – Enforcement Notice under section 154 and 155 of the Act, referring the following works that have been carried out without planning permission:
    - Extension of the golf course into what was formerly hard surfaces of the clubhouse car park,
    - Construction of screening berm in proximity to extended area of golf course,
    - Construction of service/access route and service yard to south of screening berm,
    - Erection of fence in designated Especially High Amenity Area,
    - Extension of golf course to facilitate relocation of the 4<sup>th</sup> Tee, construction of new 5<sup>th</sup> Tee and the change of direction of play, and
    - Erection of water tank.

- The PA have undertaken various enforcement proceedings against the golf club.

## 6.2. Planning Authority Response/Owner/Occupier Response

- None

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000 (as amended)

- In section 2(1) define 'works' as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.
- In section 3(1) define 'development' as the carrying out of works in, on, over or under land, or the making of a material change of use of any land or structures situated on land.
- In section 4(1) sets out certain development which is exempted for the purposes of the Act.
- In section 4(2) enables the Minister to make regulations to provide classes of development to be exempted development and in section 4(4) precludes such exemptions if an EIA or AA of a development is required.

### 7.2. Planning and Development Regulations, 2001

- In article 6(1) states that, subject to article 9, development of a class specified in column 1 of Part 1 (General Development) of Schedule 2 shall be exempted development subject to the conditions and limitations set out in column 2.
- Class 34 of Part 1 refers to '*Works incidental to the maintenance and management of any golf course or pitch and putt course, including alterations to the layout thereof, excluding any extension to the area of a golf course or pitch and putt course*'. There are no conditions or limitations set out for the Class in column 2.

## 8.0 Assessment

### 8.1. Is or is not development

- 8.1.1. The subject works comprise reconfiguration of the golf course at Narin, Portnoo and the associated orientation of play. There is no information on file regarding the previous layout of the golf course. However, such reconfiguration is likely to have included acts of construction and/or excavation of Tee and/or green and would constitute development.
- 8.1.2. The referrer has stated that balls fall from the Tee oversails his land (see attached submissions). Upon inspection of the site, and as is evident in the attached photographs (photograph 5), depending on where someone Tees off from on Tee 3, it is possible that balls could over sail these lands. In coming to this view I am having regard to my observed line of sight from the divots on the tee and the flag in the third green marking hole no.3. Whilst not all locations on the Tee would result in balls oversailing third party lands, there are locations on the Tee where this could arise, in particular to the back and east of the Tee. Any such balls oversailing or landing on third party lands would have the potential for health and safety issues and comprise a material change of use of these lands, from agriculture to golf course, over third party lands. The referred works would therefore also comprise development on this ground.

### 8.2. Is or is not exempted development

- 8.2.1. Class 34 of the Regulations refers to works that are incidental to maintenance and management of any golf course or pitch and putt course, including alterations to the layout there of but excluding any extension to the area of a golf course.
- 8.2.2. In this instance I would accept that the reconfiguration of the golf course at Narin and the associated orientation of play, that takes place within the grounds of the golf course are exempted. However, any alteration which results in the ball travelling over third party lands would not be exempted development by virtue of the change of use arising (for which no exemption exists) and the specific exclusion set out in Class 34 i.e. it excludes any extension to the golf course area. Any oversailing of third party lands would effectively extend the area of the golf course.

## 9.0 Appropriate Assessment

9.1. The subject site is situated directly north of West of Ardara/ Maas Road Special Area of Conservation. It is stated above that works to reconfigure the golf course are likely to have entailed acts of construction and/or excavation. However, these works do not interfere with the ecosystem associated with the SAC, ground works are very modest and there are no direct links to the adjoining SAC. Consequently by virtue of the nature, scale and location of the proposed development, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the reconfiguration of golf course (location of new Tee) and associated orientation of play is or is not development or is or is not exempted development:

**AND WHEREAS** Patrick K. Moore requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 21<sup>st</sup> day of December 2022 stating that the matter was development and was exempted development:

**AND WHEREAS** Patrick K. Moore referred this declaration for review to An Bord Pleanála on the 13<sup>th</sup> day of January 2023:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –



- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the reconfiguration of golf course (location of new Tee) and associated orientation of play is likely to have included acts of construction and/or excavation,
- (b) as orientated, play from the subject Tee could result in golf balls oversailing third party lands,
- (c) such oversailing would comprise a change of use of third party lands (from agriculture to golf course) and comprise an extension of the golf course area.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the reconfiguration of golf course (location of new Tee) and associated orientation of play is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Deirdre MacGabhann

Planning Inspector

27<sup>th</sup> April 2023